

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 629 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GAUTAM DYES AND CHEMICALS

Versus

ANIL STARCH PRODUCTS LTD

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Appearance:

None present for Petitioner

MR AV TRIVEDI for MR AC GANDHI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/03/99

ORAL JUDGEMENT

1. On 11-2-1999, arguments of the counsel for the petitioner were heard in this civil revision application and the same was ordered to be stand over to 17th February, 1999 for dictation of order. Thereafter, as sufficient time was not left out to the discretion of the Court, this matter has been adjourned from time to time. Today, the Court has time to give dictation of the order. Accordingly, the matter is taken up for dictation of the

same.

2. This civil revision application under section 115, C.P.C. is directed by the defendant-petitioner against the order of the City Civil Court No.20, Ahmedabad dated 9th February, 1995 under which the leave to defend the suit has been granted to him subject to the payment of Rs.2,11,908-51ps..

3. The facts of the case, in brief, are that the plaintiff filed a suit with the case that the defendant placed order with the plaintiff for supply of suit goods and accordingly goods were supply to it by the plaintiff. For the goods which have been supplied to the defendant by the plaintiff, the bills were given and the suit has been filed for the recovery of the outstanding amount of goods and interest thereon at the rate of 21% p.a. and costs.

4. The defendant-petitioner filed an application for grant of unconditional leave to defend the suit. According to the defendant before filing of the suit, there was an order placed by the defendant to the plaintiff but the plaintiff has failed to supply the goods. The suit goods were not supplied to the defendant by the plaintiff and even no reply was also given to the defendant. As a result of non-supply of goods by the plaintiff to the defendant, the defendant suffered a lot. The defendant-petitioner has come up with further case that whenever the plaintiff used to supply the goods, he used to give the bill at higher rate and then he used to give the discount at the rate of Rs.10/per bag. This amount of discount was not given to the defendant by the plaintiff. Then the defendant comes with the case that some credit notes were given by the plaintiff to it on this count and as per the mutual agreement between the parties, the defendant is entitled for the commission at the rate of 12%, which comes to Rs.90,000/-. Regarding interest, the defendant-petitioner has come up with the case that there was no agreement between the parties and only understanding was there that the payment was to be made during 90 to 100 days. The plaintiff, as per the case of the defendant-petitioner, had himself admitted that due to fire which took place in the factory, it could not supply the goods to the defendant. So, in short, the defendant-petitioner has come up with the case that it is entitled to the amount like Rs.80,000/towards difference of rate, Rs.90,000/towards commission and further an amount of Rs.60,000/towards the amount of discount at the rate of Rs.10/- per bag.

5. Learned counsel for the petitioner contended that in view of the claim of the defendant, the learned court below has committed serious error of jurisdiction in not granting it unconditional leave to defend the suit. It has next been contended that these are the claims of the defendant arising out of same transaction and as such in the suit it is legally entitled to pray for adjustment of this amount towards the dues of the plaintiff.

6. Learned counsel for the plaintiff-respondent, on the other hand, contended that the claim of the plaintiff made in the suit has been admitted by the defendant and the learned trial court in view of this admission has not committed any illegality in granting leave to defend the suit to the defendant subject to payment of Rs.2,11,908-51. It has next been contended that the claim made by the defendant is altogether arising out of different cause of action and the plaintiff has not admitted the same. Merely because the defendant raised some claims in the application filed by it for grant of leave to defend, the same cannot be granted and to the extent where the defendant has to be granted unconditional leave to defend the suit. Lastly, it is contended that, otherwise also, the case of the defendant-petitioner does not fall under any of the clauses (a), (b) or (c) of subsection (1) of section 115, C.P.C.. The proviso to subsection (1) of section 115, C.P.C. also does not help to the defendant-petitioner. It is a case where even if it is taken that the defendant has some claim against the plaintiff then for which it is always open to it to file the separate suit but by raising such a claim in the suit in which the claim against the plaintiff is admitted by it, passing of decree in the suit may not be deferred.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. From the judgment of the learned trial court, I find that the claim made by the plaintiff-respondent in a suit against the defendant-petitioner has been admitted by the petitioner. There is a clear finding recorded on this admission by the learned trial court which has not been challenged by the defendant-petitioner in this civil revision application. Learned trial court has considered every aspect of the matter and due weightage has been given to the fact that even if the claim of the defendant may be gone into still in view of the fact that plaintiff has admitted the claim of the petitioner, it is not a case where the defendant has to be granted unconditional leave to defend the suit. From the judgment of the

learned trial court, I notice the fact that it has decided the matter on this admission of the claim of the plaintiff-respondent by the defendant. Looking to the nature of the claim, it is very difficult at this stage to say whether the defendant will be able to establish the same or not and coupled with the fact that the defendant-petitioner admitted the claim of the plaintiff-respondent, the learned trial court has not committed any error of jurisdiction in passing of the impugned order, which calls for the interference of this Court under section 115, C.P.C.. Otherwise also, in case the impugned order is allowed to stand it will not occasion any failure of justice or will not cause any injury to the defendant-petitioner. If, ultimately, the defendant succeeds in establishing of its claim if is made then certainly, the Court will decide the same in accordance with law.

9. There is one more aspect with respect to which this matter may be examined. This plea of the defendant may have some justification at the stage where after depositing of this amount by the defendant-petitioner, the learned trial court considers the case for disbursement of that amount in favour of the plaintiff but not at the stage where the defendant-petitioner has only applied for grant of unconditional leave to defend the suit. In this case the learned trial court has not committed any error of jurisdiction in passing of the impugned order.

10. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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